SOON SINGH A/L BIKAR SINGH

v.

PERTUBUHAN KEBAJIKAN ISLAM MALAYSIA (PERKIM) KEDAH & ANOR.

HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[ORIGINATING SUMMONS NO. R2-24-76-92]
2 FEBRUARY 1994

CONSTITUTIONAL LAW: Plaintiff applying for declaration that he is not a Muslim - Defendant raising preliminary issue - Whether High Court has jurisdiction to grant declaration sought by plaintiff - Consideration of Articles 11 & 121(1A) of Federal Constitution.

The plaintiff converted to Islam in 1988. At the time of his conversion the plaintiff was under 18 years of age. In 1992, the plaintiff went through a Baptism ceremony to reconvert to Sikhism and executed a Deed Poll to renounce the religion of Islam, to revert to his original Sikh faith and to use his Sikh name.

In support of his application the plaintiff affirmed that he had converted to Islam without the knowledge of his mother and his Counsel submitted that as the plaintiff was below the age of 18 at the material time, the conversion was therefore invalid.

Counsel for the second defendant raised as a preliminary issue the question of jurisdiction. Counsel contended that a civil Court had no jurisdiction to make the declaration prayed for and submitted that only the Syariah Courts had the jurisdiction.

Held:

[1] It is clear from the Fatwa that a Muslim who renounced the Islamic faith by a Deed Poll or who went through a Baptism ceremony to convert to Sikhism continues to remain in Islam until a declaration has been made in a Syariah Court that he is a "murtad". The Syariah Court must necessarily have the jurisdiction to make the declaration and the Court can assume that jurisdiction under s. 25(2) of the Kedah Syariah Courts Enactment 1983.

[2] In the circumstances, in accordance with the Fatwa the plaintiff is still a Muslim. He should go to a Syariah Court for the declaration. Whether or not his conversion is invalid is also a matter for the Syariah Court to determine in accordance with Hukum Syarak and Article 11 of the Federal Constitution has no application.

[3] The subject matter in this application is in respect of a matter which comes within the jurisdiction of the Syariah Courts. The civil Courts have no jurisdiction to hear the application.

[Plaintiff's application dismissed with costs].

Cases referred to:

Dalip Kaur v. Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor. [1991] 3 CLJ 2768 / [1992] 1 MLJ 1 ***(foll)***

Teoh Eng Huat v. Kadhi, Pasir Mas & Anor. [1990] 2 CLJ 11 / [1990] 2 MLJ 300 ***(refd)***

Legislation referred to:

Administration of Muslim Law Enactment 1962, ss. 37, 38, 139, 140

Federal Constitution, Articles 11, 121(1A)

Kedah Syariah Courts Enactment 1983, ss.21, 25(1), (2)

For the applicant - Balwant Singh; M/s. Balwant Singh Sidhu & Co.

For the 1st and 2nd defendants - Mohd. Shakri bin Abd. Razak; M/s. Choe Shakri & Hamzah

JUDGMENT

Wan Adnan bin Ismail J:

This is an application for a declaration that the plaintiff is not a Muslim.

The plaintiff was born on 3 January 1971 at Butterworth to Sikh parents and was brought up as a Sikh. From 1984 he attended the Sekolah Menengah Dato' Sheikh Ahmad, Arau Perlis. On 14 May 1988 he converted to Islam and changed his name to Satman Soon bin Abdullah. The conversion was duly registered at the Mahkamah Syariah Daerah Kota Setar, Kedah under s. 139 of the Administration of Muslim Law 1962 (the Enactment).

On 16 July 1992 he went through a Baptism ceremony to reconvert to Sikhism at the Sikh Temple, Jalan Parlimen, Kuala Lumpur. On 27 July 1992 he executed a Deed Poll to renounce the religion of Islam, to revert to his original Sikh faith and to use his Sikh name of Soon Singh a/l Bikar Singh.

In his affidavit affirmed on 10 August 1993 he said that he converted to Islam without the knowledge of his mother. His father had already died.

As at the date of conversion the plaintiff was under 18 years old. His learned Counsel submitted that the conversion was therefore invalid. The execution of the Deed Poll was only for the removal of doubt.

The learned Counsel for Jabatan Agama Islam Kedah, the second defendant raised as a preliminary issue the question of jurisdiction. He contended that a Civil Court had no jurisdiction to make the declaration prayed for. Only the Syariah Courts had the jurisdiction. I agreed with him and dismissed the application.

In *Dalip Kaur v. Pegawai Polis Daerah, Balai Polis Daerah, Bukit Mertajam & Anor.* [1992] 1 MLJ 1 the plaintiff, the mother of the deceased, sought a declaration that the deceased was not a Muslim. The Supreme Court directed the High Court to refer certain questions of Islamic Law that arose to the Fatwa Committee under s. 37 of the Enactment. The questions referred to and the answers given were as follows:

S: Adakah seseorang yang beragama Islam yang membuat perisytiharan melalui deed poll bahawa dia menolak agama Islam Terkeluar daripada agama Islam?

J: Jika seseorang yang beragama Islama yang membuat perisytinharan melalui deed poll bahawa dia menolak agama Islam maka adalah ia terkeluar daripada Islam (murtad).

S: Adakah seseorang yang beragama Islam yang pergi bersembahyang di kuil Sikh mengikut cara sembahyang agama Sikh terkeluar daripada agama Islam?

J: Seseorang yang beragama Islam yang pergi bersembahyang di kuil Sikh mengikut cara sembahyang agama Sikh juga terkeluar daripada agama Islam (murtad).

S: Adakah seseorang yang beragama Islam yang menjalani upacara memeluk agama Sikh adalah terkeluar daripada Islam?

J: Seseorang yang beragama Islam yang menjalani upacara memeluk agama Sikh adalah terkeluar daripada Islam (murtad). **Namun begitu untuk menentukan sama ada seseorang itu terkeluar daripada Islam (murtad) atau tidak hendaklah terlebih dahulu disabitkan oleh mana-mana Mahkamah Syariah dan dihukum ia sebagai terkeluar daripada Islam (murtad), jika tidak ada disabitkan oleh mana-mana Mahkamah Syariah dan dihukum maka seseorang itu tetap di dalam agama Islamnya.**
(emphasis is mine)

S: Adakah seseorang yang beragama Islam yang memakan daging babi terkeluar daripada agama Islam?

J: Seseorang yang beragama Islam yang memakan daging babi tiada terkeluar daripada agama Islam.

S: Adakah seseorang yang bukan beragama Islam yang kemudiannya memeluk agama Islam tetapi tidak berkhatan sehingga dia meninggal dunia, mati sebagai seorang yang bukan beragama Islam, semata-mata kerana dia tidak berkhatan?

J: Seseorang yang memeluk agama Islam yang tiada berkhatan sah Islamnya.

Pada pendapat Jawatankuasa Fatwa Majlis Agama Islam Negeri Kedah Darulaman yang bersidang pada 27 Oktober 1991 bahawa berhubung Gurdev Singh a/l Guruvak Singh, Kad Pengenalan A 1028701 ia adalah seorang Islam dengan sahnya kerana telah sabit keIslamannya dengan ia mengucap dua kalimah syahadat di hadapan Kadi Daerah Kulim, Negeri Kedah Darulaman bertarikh 1 Jun 1991 seperti yang tercatit di dalam borang ikrar orang yang masuk Islam bil. 5/91 dan berkekalan Islamnya kerana tidak ada hukuman dari mana-mana Mahkamah Syariah Negeri Kedah ini yang mensabitkan ia terkeluar daripada Islam.

It is clear from the Fatwa that a Muslim who renounced the Islamic faith by a Deed Poll or who went through a Baptism ceremony to convert to Sikhism continues to remain in Islam until a declaration has been made in a Syariah Court that he is a "murtad".

This Fatwa clearly shows that only a Syariah Court has the exclusive jurisdiction to determine whether or not a person has ceased to be a Muslim. The above Fatwa is not contained in the Enactment. The Enactment does not contain the provisions of the Muslim Law. It is not meant to. It is merely a law (as the name suggests) for the administration of the Muslim Law.

Section 25 of the Kedah Mahkamah Syariah Enactment 1983 provides:

> 25(1) Any provision or interpretation of any provision in the Enactment which is inconsistent with Hukum Syarak shall be void to the extent of the inconsistency.
>
> (2) In the event of a *lacuna* or in the absence of any matter not expressly provided for by this Enactment the Court shall apply Hukum Syarak.

Section 21 provides the civil jurisdiction of a Syariah Court in Kedah. It is not mentioned in the section that the Court has the jurisdiction to

make a declaration on the status of a Muslim who had renounced the religion of Islam. Hukum Syarak will therefore apply. The Fatwa Committee in giving the Fatwa followed Hukum Syarak (see s. 38 of the Enactment). According to the fatwa a Muslim who renounced the Islamic faith continues to remain in Islam until a Syariah Court makes a declaration that he has become a 'murtad'. The Syariah Court must necessarily have the jurisdiction. The Court can assume that jurisdiction under s. 25(2) quoted above.

The Muslim Law on conversion is not provided in the Enactment. There are only 3 sections on converts. Section 139 requires a register of converts to be maintained. Section 140 provides that no person shall be converted to the Muslim Religion otherwise than in accordance with Muslim Law. Who can convert and whether a person below the age of 18 years must have the consent of his parents to convert are not provided in the Enactment. The Muslim Law in these respects though not provided in the Enactment must be followed. The Fatwa that was issued by the Fatwa Committee was based on the Muslim Law.

In accordance with the Fatwa the plaintiff here is still a Muslim. He should go to a Syariah Court for the declaration. Whether or not his conversion is invalid is also a matter for the Syariah Court to determine in accordance with Hukum Syarak. Article 11 of the Federal Constitution has no application.

I find some support for my view from the separate judgment of Mohamad Yusof SCJ in *Dalip Kaur's* case. His Lordship said:

> Such a serious issue would, to my mind, need consideration by eminent jurists who are properly qualified in the field of Islamic jurisprudence.
>
> On this view it is imperative that the determination of the question in issue requires consideration of the Islamic law by relevant jurists qualified to do so. The only forum qualified to do so is the Syariah Court.

His Lordship further said:

> I am of the view that since the fatwa was sought from the committee, clear directions from the committee should be adhered to.
>
> The fatwa issued by the committee is clear in which it says:
>
> > ... sama ada seseorang itu terkeluar daripada Islam (murtad) atau tidak hendaklah terlebih dahulu disabitkan oleh mana-mana Mahkamah Syariah dan dihukum ia sebagai terkeluar daripada Islam (murtad) jika tidak ada disabitkan oleh mana-mana Mahkamah Syariah dan dihukum maka seseorang itu tetap di dalam agama Islamnya.
>
> It further states that:
>
> > ... berkekalan Islamnya kerana tidak ada hukuman dari mana-mana Mahkamah Syariah negeri Kedah ini yang mensabitkan ia terkeluar daripada Islam.

The learned Counsel for the plaintiff also referred me to the case of *Teoh Eng Huat v. Kadhi, Pasir Mas & Anor.* [1990] 2 MLJ 300.

He said that the Supreme Court would have granted the declaration prayed for but for the fact that the subject was no longer an infant. He also said that the Civil Courts would have declined to hear and determine that case and also *Dalip Kaur's* case if they did not have the jurisdiction. From the reports I notice that the question of jurisdiction was not raised in those cases.

It is my view that the subject matter in this application is in respect of a matter which comes within the jurisdiction of the Syariah Courts. The Civil Courts have no jurisdiction. Article 121(1A) of the Federal Constitution provides:

> (A) The Courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

The application is dismissed with costs.